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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/038,989      | 01/04/2002  | Jerzy W. Miernik     | 062891.0635         | 9591             |

7590 03/29/2004

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EXAMINER

NGUYEN, DUC MINH +

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2643

2

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/038,989

Applicant(s)

MIERNIK ET AL.

Examiner

Duc Nguyen

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 6-8, 12-14, 18, 20, 21, 30 and 31 is/are rejected.
- 7) ☒ Claim(s) 3-5, 9-11, 15-17, 22-29 and 32-39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 6-8, 12-14, 18, 20-21, 30-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Marinho et al (JP02000209298A).

Consider claims 1, 6-7, 12-13, 18, 20, 30. Marinho teaches a method and system for upgrading service class of connections in a wireless network, comprising identifying a congested CoS in a sector of a wireless network (page 1 of the detail description, paragraphs 3-7; page 3 of the detail description, paragraph 19); determining bandwidth availability in the sector of the wireless network at an enhanced CoS in relation to the congested CoS (page 1 of the detail description, paragraphs 6-7; page 4 of the detail description, paragraphs 22-25); selecting a communications session in the congested CoS for upgrading (page 1 of the detail description, paragraphs 6-7; page 4 of the detail description, paragraphs 22-25); and upgrading the communications session to the enhanced CoS (page 1 of the detail description, paragraphs 6-7; page 4 of the detail description, paragraphs 22-25; pages 5-6 of the detail description, paragraph 33).

Consider claims 2, 8, 14, 21, 31. Marinho further teaches accessing a policy information base (database 160) comprising service policies for communication sessions in the congested CoS (pages 5-6 of the detail description, paragraph 33); identifying an upgradeable connection

Art Unit: 2643

based on the service policy (pages 2-3 of the detail description, paragraphs 10-15); and selecting the upgradeable communication sessions for upgrading (pages 2-3 of the detail description, paragraphs 10-15).

***Allowable Subject Matter***

3. Claims 3-5, 9-11, 15-17, 22-29, 32-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claim 19 is allowed over the prior art of record.

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc Nguyen whose telephone number is 703-308-7527. The examiner can normally be reached on 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Duc Nguyen  
Primary Examiner  
Art Unit 2643

3/20/04